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VIII. — *The Necessity of Ritual Purification after Justifiable Homicide*

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“WER den Buhlen bei der Gattin, Tochter, Mutter, oder Schwester bei der That ertappte und ihn tötete, wer einen Geächteten oder einen Tyrannen erschlug, brauchte nicht gereinigt zu werden.” These are the words of Paul Stengel,¹ a foremost authority on ancient Greek ritual. But other authorities do not agree with him. For example, Schoemann,² speaking of justifiable homicide, says, “Wer solche tödtete war strafflos und bedurfte nur einer religiösen Reinigung”; and Rohde³ declares “Die Reinigung dessen der Blut vergossen hat . . . war auch dem unerlässlich, der im rechtmässigen Streit oder ohne Absicht und Vorwissen einen Menschen erschlagen hatte.” And Wächter, in his recent valuable collection of material relating to the purificatory rites of the Greeks, has said,⁴ “Jede Tötung, welcher Art sie auch ist, sogar die gesetzlich erlaubte, macht eine Reinigung nötig.”⁵

These writers in general refer back to Philippi's masterly work, *Der Areopag und die Epheten* (1874). In his discussion of the subject of purification for homicide we read,⁶ “Wer seinen Gegner mit Recht erschlagen hatte, musste und konnte sich nicht mit ihm und seinen Verwandten versöhnen, aber der Reinigung hatte er sich dennoch zu unterziehen.”

The point is one of considerable interest in itself, but gains added importance when viewed in connection with the advent of moral ideas into the Greek system of purificatory

¹ *Griechische Kultusaltertümer*², 141.

² *Griechische Altertümer*⁴, II, 365.

³ *Psyche*⁴, II, 73 f.

⁴ *Reinheitsvorschriften im griechischen Kulte*, 65.

⁵ See also Hermann-Thumser, *Staatsaltertümer*, I, 363 and note 5.

⁶ P. 127; cf. also 61 and 62. Philippi, in a note (no. 94), quotes Hermann, Schoemann, and Maetzner as holding the opposite view from his own.

rites. No longer was it merely the fact of bloodshed that was considered. The point had been reached where a distinction was made between homicide intentional and unintentional, justifiable and unjustifiable. Important steps these had been and very significant of the tendency to moralize the unmoral, — a tendency that had already manifested itself in numerous ways in the realm of purification. Moral elements had found their way into the cleansing rites required as a preliminary for initiation into the mysteries, and had modified the extent and even the character of the pollution entailed by sexual intercourse. But there seems to have been one field at least in which the Greek was reluctant to make any concession. He hesitated to moralize the dread of contact with death. He continued to require ritual purification of those who had touched the corpse or had attended the obsequies, contenting himself with mitigating certain obvious practical inconveniences of the system.

This being the case, it is not so surprising to find that, while the Athenians recognized that the moral guilt of accidental homicide was by no means equal to that of murder with malice prepense, they could bring themselves to dispense with ritual purification in the former case scarcely more than in the latter. And the quotations I have given above will have shown that, in the opinion of most scholars of our day, purification was required in cases where no degree of moral guilt — not even criminal negligence — could be imputed to the slayer, where, in fact, the law had expressly authorized homicide.

In a moot point like this it seems proper to restate the evidence. Stengel quotes little authority for his view and does not notice the opposite position. If we examine the grounds on which the other scholars I have quoted base their opinion, it will appear, I believe, that their statements should assume a less unqualified and dogmatic form, if, indeed, they shall not seem to be in error.

Wächter¹ rests his case on the following passages: Demosthenes, *xxiii*, 72 f., which, since it deals only with unin-

¹ *Op. cit.*, 65.

tentional homicide, is not pertinent to the present question; Antiphon, vi, 4, which entails purification on the man who kills his own slave, or a member of his household who has none to avenge him. There is no indication that justifiable homicide is meant.¹ Wächter quotes also Porphyrius, *de Abst.* i, 9, οἶμαι δ' ἔγωγε καὶ τοὺς συγκεχωρημένους ὑπὸ τοῦ νόμου φόνους τὰς ἀφοσιώσεις λαμβάνειν τὰς εἰθισμένας διὰ τῶν καθαρμῶν . . . ὅθεν οὐ μόνον ζημίας ἔταξαν οἱ πρῶτοι συνιδόντες, ἀλλὰ καὶ ἕτερον φόβον ἄλογον ἐπήρτησαν, οὐ καθαρὸς ἐπιφημίσαντες εἶναι τοὺς ὅπως οὖν ἄνθρωπον ἀνελόντας, μὴ χρησαμένους καθαρμοῖς. This passage Hermann was probably wrong in referring to φόνος ἀκούσιος.² It is too late to serve as evidence for the classical period, but I shall have occasion to recur to it later.³

In a note⁴ Wächter quotes a law of Draco, preserved in Demosthenes.⁵ It states certain cases in which homicide was lawful, καὶν οὕτω τις δράσῃ, καθαρὸν διώρισεν εἶναι. This is at first blush quite unequivocal, but Wächter maintains that it is no exception to the principle he has laid down,⁶ because καθαρός means "rein von Strafe," whatever that may mean. He appeals for support to that passage of Plato's *Leges*,⁷ where for his ideal code the legislator provides that he who kills thief, burglar, adulterer, etc., is to be καθαρός, that is, says Wächter, "soll frei von Schuld, straflos sein; eine Reinigung aber hat auch er vorzunehmen." And Jowett seems to be of much the same opinion. In his translation of the long passage of the *Leges* in which these words occur, he renders καθαρός usually in the legal sense, "free from guilt," "guiltless," once only⁸ in its ceremonial sense, "pure."

It may be said with some show of reason that nothing in the ideal legislation of an advanced thinker like Plato can prove anything whatever for actual legal or ritual practice. But in the *Leges* Plato is not elaborating a purely ideal system of laws, with no concern as to whether it could ever be

¹ Cf. Plato, *Leges*, 865 D and 868 A. Both would come within the statement of Antiphon and neither is φόνος δίκαιος.

² Hermann-Thumser, *Staatsalt.* i, 363.

³ xx, 158.

Op. cit., 65.

P. 100.

⁷ 874 B.

⁴ Op. cit., 65, note 2.

⁸ 868 C.

put in practice, but is attempting to formulate a practical code that should be actually workable if adopted by some colony. Consequently it is not to be supposed that he was uninfluenced by the laws actually in force at Athens. And when he followed an Athenian law he would be likely to incorporate the substance of it in his code. A comparison of Plato with the laws quoted in the orators¹ shows that he not infrequently did this. And when he has adopted the language of an Attic law, it is reasonable to suppose that he adopted the accepted and usual significance of that language. If, then, we can discover his meaning, we can argue back from even an ideal code to the meaning of the actual law on which his own is modelled. The burden of proof rests on those who take *καθαρὸς* in an unusual and practically unparalleled sense. It is my part only to point out how great that burden is and how little necessity there is of assuming an unusual meaning for this ritualistic word. And if we can show that in this passage of the *Leges* Plato employs the word only in its religious and ritual sense, we have at least rendered it impossible for Wächter to use Plato to support the meaning he requires for *καθαρὸς* in the Draconian legislation.

An examination of Plato, *Leges*, 864 C-874 D, reveals the following facts :

I. In most cases there is specific provision for purification, *e.g.* 865 B, C, D, etc. It looks as if Plato explicitly prescribes purification when he conceives it to be required. Otherwise he must have omitted it unintentionally, or for the sake of variety, or on the assumption that it would be understood without specific mention. But

II. It is easy to see that the cases where he does omit it belong to quite a different category, — one wherein the guilt involved is at most very slight, much less than that of accidental homicide was felt to be. Such cases are :

a. Homicide in self-defence or in defence of kinsmen or property, 869 C, 874 C.

¹ Cf. 865 D and Dem. XXIII, 72 f.; 865 A and Dem. XXIII, 53-55; 868 A and Ant. VI, 4; 869 C-D and Dem. XXIII, 60.

b. Homicide of a slave who has slain his master in anger. Such a one the kinsmen of the dead man may deal with as they please, — provided they kill him, — and still be pure, 868 B. It is strongly intimated that they would be much more likely to require purification if they let him live.

c. The physician whose patient dies under his hands while he is trying to effect a cure is pure, 865 B. This, of course, cannot come under justifiable homicide, strictly speaking.¹ It is rather considered a special case of accidental homicide, ἡπὶ αὐτῶν ἀκόντων τελευτᾷ, and put in a special class, — a professional class, we might call it. From the legal standpoint, too, the physician was protected against any trouble that might arise from the death of a patient.² The physician who should be obliged to undergo ritual purification whenever one of his patients died would be seriously hampered in his practice; he could seldom be pure, if the period of uncleanness were of any usual length.³ The obvious inconvenience of the strict ritual requirement for accidental homicide may well have occasioned this eminently sensible and almost inevitable concession to the exigencies of the medical profession.

III. It is specifically stated that if brother kill brother in self-defence, or citizen citizen, or stranger stranger, or slave slave, or stranger citizen, the homicide is pure. It is instructive to contrast a portion of this passage (869 C) with 868 E. The latter provides that if brother kill brother in anger, *he must undergo purification* and exile; the latter declares that the brother who kills his brother in insurrection, or battle, in self-defence, if the slain man struck the first blow, καθάπερ πολέμιον ἀποκτείνας ἔστω καθαρός. The phrase καθάπερ πολέμιον ἀποκτείνας has a significance which has usually been overlooked, but which it is important to note. Wächter

¹ Meier-Schoemann-Lipsius, *Der attische Process*, I, 378 n.

² Antiphon, IV, γ, 5.

³ Three days was the period of exclusion for a priestess who had merely entered the house in which a man had died, *Archiv für Religionswissenschaft*, x, 406, and for any who had attended the funeral, *Leges Sacrae*, II, 303, No. 117; cf. Servius on *Aeneid*, I, 329. If the death were that of a kinsman, the impurity lasted for from twenty to forty days, *Leges Sacrae*, ib. and II, 364, No. 148. For one alleged to be the cause of the death, the period of exclusion would, in all probability, be at least as long as this.

himself has observed¹ that there is little trace in Greece, and absolutely none at Athens, of the notion that to kill a man in open fight in war brought pollution with it. Jew² and Roman³ held that purification was necessary after battle, but the only evidence to indicate that the post-Homeric Greek felt the need of *κάθαρσις* after battle is found in the annual purification of the Macedonian army⁴ and the post-bellum lustration of the whole Boeotian people.⁵ The argument from silence seems in this instance all the more weighty, because it is difficult to see how, if Athens had a custom corresponding to that of the Jews, it could escape being mentioned somewhere in the extant literature. But there is other and more positive evidence that it did not involve pollution to slay a public enemy. A law quoted by Andocides⁶ states that certain classes of political criminals not only might but must be slain by any one who could lay hands on them, and that all must consider the slayer *ὅσιον καὶ πρὸς θεῶν καὶ πρὸς δαιμόνων, ὥς πολέμιον κτεινάντα τῶν Ἀθηναίων*. A man who is *ὅσιος* in the sight of the gods needs no purification. The impression we here receive that the slayer of a public enemy was not even ceremonially impure is confirmed by the words of Plato.⁷ And we can follow our clue a little farther if we observe what sort of crimes rendered a man a public enemy and classed him with the foe in battle. In Andocides we learn that such was the man who tries to overthrow

¹ Op. cit., 73 f.

² Numbers, 31, 19 f.

³ Vergil, *Aen.* II, 717 ff. Festus (epit.), 117 Müller; cf. Homer, *Iliad*, VI, 266 ff. For the Teuton there is no indication that this was the case. See Farnell, *Evolution of Religion*, 109.

⁴ Livy, XL, 6.

⁵ Nilsson, *Griechische Feste*, 405. My colleague, Professor W. A. Heidel, suggests that even this may be due not so much to the fact that the foes' blood had been shed, as to the feeling that it is well to be on the safe side, in case atrocities involving impurity had been committed in the relaxation of the moral feelings that inevitably accompanies war. For example, entirely aside from cold-blooded slaughter of non-combatants and homicides of others not strictly to be called *πολέμιοι*, a man might have slain one of his own side with malice prepense under cover of battle, or done other defiling deeds under the impulse of excitement or anger (Paus. II, 20, 2; cf. Thuc. VII, 29). Such deeds would pollute not only the perpetrator, but the whole people.

⁶ *De Mysteriis*, 96 ff.; cf. Euripides, *Ion*, 1334.

⁷ See p. 103.

popular government,¹ holds any office under a régime that has subverted popular government,² rules as a tyrant, or assists a tyrant to gain power.³ Now these are the crimes mentioned in Lycurgus, 125, who says that the slayer of the man who commits them is *καθαρός*. An interesting sidelight comes from a passage in Xenophon,⁴ which I think has not previously been quoted in this connection: Οὔτω δὲ πόρρω προεληλύθασι φυλακῆς ὥστε πεποίνηται πολλοὶ νόμον τῷ μαιφόνῳ μηδὲ τὸν συνόντα καθαρεύειν. In spite of this precaution tyrants live in the utmost danger. . . . Ἀντὶ γὰρ τοῦ τιμωρεῖν αὐτοῖς (*i.e.* tyrants), αἱ πόλεις μεγάλως τιμῶσι τὸν ἀποκτείναντα τὸν τύραννον καὶ ἀντὶ γε τοῦ εἶργειν ἐκ τῶν ἱερῶν, ὥσπερ τοὺς τῶν ἰδιωτῶν φονέας, ἀντὶ τούτου καὶ εἰκόνας ἐν τοῖς ἱεροῖς ἱστᾶσιν αἱ πόλεις τῶν τοιοῦτο ποιησάντων. It may be objected that the whole passage is somewhat rhetorical and that Xenophon does not affirm in so many words the admission of tyrannicides into the temples. But he certainly implies it. And if they were admitted without further ceremony, they must have been considered *καθαροί* in the ceremonial sense.⁵ It is with such men as tyrants and traitors that Demosthenes⁶ classes his political opponents when he says that the Athenians of a previous generation would have considered those who stoned such men with their own hands to be pure.⁷

So when Plato uses *καθαρός* of homicide in self-defence and classes it with homicide of a public enemy, he uses the word in its proper, ritual sense.

The notion that justifiable homicide entailed purification seems to rest largely on the authority of Philippi, who alone, so far as I can see, advanced any arguments for his view, and whom almost all his successors cite. His arguments, given on pp. 62 f., may be stated as follows:

1. *καθαρός* ἔστω, said of the slayer, is equivalent to *νηπιονεὶ τεθνᾶτω*, said of the slain.

¹ § 96; cf. Dem. xx, 159. ² § 97. ³ Cf. Livy, xxxi, 44, 8. ⁴ *Hiero*, 4, 4-5.

⁵ Cf. Lucian, *Tyrannicida*, 19. This work of Lucian's shows no trace of any feeling that the tyrannicide needs purification. He claims a reward (11) and says that after the tyrant's death *καθαρά πάντα καὶ εἰρηνικά* (ἔστιν). But the ritual meaning of *καθαρά* must not be pressed here.

⁶ xix, 66.

⁷ Cf. Theognis, 1182.

2. The necessity of purification for all bloodshed appears from what the orators, especially Antiphon, say or imply in speeches dealing with murder cases.

3. Apollo Delphinios, at whose court (the Delphinion) cases of justifiable homicide were tried, was himself purified from the blood of the Python.

4. In the very cases in which Plato declares that the homicide shall be free from punishment, he adds to the *καθαρὸς ἔστω* the words *καθαρθεῖς κατὰ τὸν ἐκ Δελφῶν κομισθέντα περὶ τούτων νόμον*.

Taking up these arguments *seriatim*, let us see if they are weighty enough to overthrow the evidence we have already examined.

1. In a sense it is true that *καθαρὸς ἔστω* is parallel to *νηπινεῖ τεθνάτω*. There can be no question that both refer to *φόνος δίκαιος*. But one is a ritual provision, the other a legal statement. It is unsafe to conclude that the two expressions have precisely the same content of meaning. Plato¹ disposes of five out of six cases of justifiable homicide with the words *καθαρὸς ἔστω*. In the sixth case *νηπινεῖ τεθνάτω* is used of the slain. Why in that one case the formula was varied, I cannot say. Its occurrence in the passage is so clumsy that I can scarcely conceive that desire for variety motivated its use. But supposing that and nothing more were the reason, it would not follow that in the other cases *καθαρὸς ἔστω* must be reduced to mean merely that no legal penalty was to be inflicted. It would mean simply and solely that in one of six more or less parallel categories, Plato chose to present the matter in its legal rather than its ritual aspect.² In fact, it would be fairer to overlay *νηπινεῖ τεθνάτω* with the meaning of *καθαρὸς ἔστω* and assume that in the case where the former is used no ritual purification was required, rather than to import *νηπινεῖ τεθνάτω* into the more ritual expression and maintain that the latter connotes merely immunity from legal penalty. Similarly, in Demosthenes³ *ἄτιμος*⁴ *τεθνάτω* and *καθαρὸν τὸν . . . ἀποκτείναντα* are used of

¹ *Leges*, 874 B f.

² Cf. And. 97.

³ 1X, 44.

⁴ For the peculiar meaning of *ἄτιμος* see Sandys's note and Harpocraton, s.v.

the same act.¹ But this does not mean that the two expressions are equivalent; the former means that the slayer need fear no legal punishment, the latter that he need undergo no ritual purification. A further argument against eliminating ritual significance from *καθαρός ἔστω* is found in the fact that in this particular instance the slaying is further spoken of as *εὐαγής*,² a word of distinctly religious significance. It is hard to see why one should need to be purified for an act that is *εὐαγής*. And, once more, the man about whose death these words were uttered had been branded a little before³ as *πολέμιος τοῦ δήμου*, and consequently was of those whom one might slay and yet be *δσιος*.⁴

2. Philippi does not state what are the passages of those speeches relating to murder cases, wherein the orators state or imply that *all* bloodshed requires purification. He probably refers to the passages that we are discussing under the other heads. I have searched the places where such statements or implications would most naturally be found, the second and third tetralogies of Antiphon, which deal respectively with *φόνος ἀκούσιος* and with a claim that an act of homicide was committed in self-defence, and also the valuable passage⁵ in the oration of Demosthenes *Against Aristocrates*, the *locus classicus* on the six methods of procedure in the various forms of homicide. With the opposite thesis to maintain, it is natural that I do not find what Philippi found therein. I do not dispute that purification was necessary after *φόνος ἀκούσιος*. That it continued to be required for this after it was no longer imposed for *φόνος δίκαιος* is naturally explained

¹ In And. 96 we read *πολέμιος ἔστω καὶ νηποινεῖ τεθνάτω, . . . ὁ δὲ ἀποκτείνας τὸν ταῦτα ποιήσαντα καὶ ὁ συμβουλευσας δσιος ἔστω καὶ εὐαγής*. Here *νηποινεῖ* is "used in alternation" with *δσιος ἔστω καὶ εὐαγής*. Will any one maintain that the two are therefore equivalent?

² The genuineness of this word has been called in question, Philippi, *op. cit.*, 62 n. But Dindorf-Blass do not consider it an interpolation. See their ed., I, LXI.

³ § 42.

⁴ See p. 104. I must not be understood to hold that the absence of legal punishment connoted freedom from ritual purification. This was not the case in *φόνος ἀκούσιος*; see, e.g., Plato, *Leges*, 865 D.

⁵ Demosthenes, XXIII, 22-86.

by the very considerable element of moral guilt that often attaches to the former, as witness our phrase "*criminal negligence*."¹ In the third tetralogy I do not find so much as a hint that if the defendant's claim were admitted that he struck in self-defence, he would still require ritual purification. On the contrary, plaintiff and defendant alike frequently use the word *καθαρός*, unqualified, in such a way as to make it clear that they do not mean merely *guiltless*, but *free from religious taint*.² There is, I think, no case where the word can mean *free from punishment* (Wächter's "straßlos"), and though in one or two instances it *may* mean *guiltless*,³ there is no place where it *must* have that significance. For that meaning the orator uses the expression *καθαρὸς τῆς αἰτίας*.⁴

Nor in the speech of Demosthenes *Against Aristocrates* do I find support of Philippi's view. I observe that in discussing involuntary homicide⁵ he definitely mentions the necessity for purification, while in the passage relating to justifiable homicide such reference is conspicuously absent. In fact, some homicides are said to be not only *δίκαιος*, not only *καλός* and *χρηστός*,⁶ but *όσιος*.⁷ Once again, is it likely that in the Athens of Demosthenes' time purification was required for an act that was *όσιος*?

3. Philippi's third point, that Apollo himself was purified from the blood of the dragon,⁸ does not seem to me to deserve the degree of significance he ascribes to it. If we grant that this may be called justifiable anguicide, there are two things to be taken into consideration.

I. This falls in the mythical period. The farther back we go (always excepting the anomalous Homeric poems), the less of the moral element can we expect to find in the ritual of purification, and the nearer do we draw to the point where there is no distinction between the various types of *φόνος*, and where all homicide involves exile or some other method of isolating the slayer from his fellows. The first case to

¹ Cf. *ἐκ τῆς ἀμαρτίας*, III, β, 6; *ἡ ἀφυλαξία*, III, δ, 7.

² So of the city, IV, α, 5; of the citizens, IV, β, 9.

³ IV, α, 1.

⁴ *E.g.* IV, β, 7.

⁵ §§ 72 f.

⁶ § 75.

⁷ § 74.

⁸ Pausanias, II, 7, 7; 30, 3.

be brought before the Delphinion was that of the legendary Theseus,¹ who was purified from homicide though his victims had been robbers and other criminals.² But quite aside from the fact that the Attic hero had incurred the taint of kindred bloodshed, to which an exceptional degree of pollution long continued to be attached,³ the requirements of the legendary age are no basis for argument about those of the fourth century; for no one will deny that along this line there had been a steady and, in the aggregate, a vast advance.

II. Apollo's victim was specifically under the protection of a deity. According to one story,⁴ it was produced from the earth and employed by Hera, in order to persecute Leto. But it was usually considered the representative and protégé — originally, in all probability, the actual embodiment — of the earth goddess herself.⁵ When Apollo slew it, he was in a similar position to that of him who slew the sacred snake of Ares near the springs of Thebes. The misfortunes that followed Cadmus as the result of his exploit formed the theme of many an ancient story. Heracles, so far as I know, required no purification for slaying the unattached monsters against which he directed his efforts. An instance of such purification would be better support for Philippi's view, though even it would lie under the disabilities inherent in any evidence from the mythical period.

The fact that the founder of the Delphinion had himself needed purification need not, in view of the progress of thought in the differentiation of the various types of homicide, mean that he required purification of every one who came before that court throughout all succeeding generations. Farnell⁶ has shown that Apollo was the most progressive of the Greek deities along moral lines, and that even in legendary lore, the typical Apolline purifications have to do with what would later have been called justifiable homi-

¹ Pollux, VIII, 119.

² Pausanias, I, 22, 2; 37, 4; 28, 10.

³ Plato, *Leges*, 868 C-E (but cf. 869 C), 871 A.

⁴ Hyginus, *Fabulae*, 140; Servius, *Aen.* III, 73.

⁵ Ovid, *Mét.* I, 438 f.; Paus. X, 6, 6.

⁶ *Cults of the Greek States*, IV, 306.

cide. For those times, Apollo was far in the van; to assume that his Attic court required purification for homicide expressly sanctioned by the law of the land, is to put this progressive deity equally far in the rear of the thought of his time.

4. The other point made by Philippi is that in the cases in which Plato declares the homicide free from punishment, he adds to the word *καθαρός* the qualifying phrase *καθαρθεὶς κατὰ τὸν ἐκ Δελφῶν κομισθέντα περὶ τούτων νόμον*. This is important, if true, but Plato does not use the formula *καθαρθεὶς καθαρός* ἔστω of justifiable homicide at all. He uses it only: (a) of accidental homicide of a friend in athletics or in war;¹ (b) of parent slain in anger, if the parent grant forgiveness before he dies.² For what is included under *φόνος δίκαιος* Plato's formula is quite different. It is ὁρθῶς ἂν καθαρός εἴη,³ καθαρός ἔστω,⁴ ἔστω καθαρός ἐν τῷ νόμῳ,⁵ πάντως καθαρός ἔστω.⁶ In none of these cases does the word *καθαρθεὶς* occur; in no case of merely accidental homicide is the specific requirement of purification omitted, except in the quite special case of the physician.⁷ It is this distinction that Philippi has strangely ignored — a distinction that seems to me to be in the highest degree significant, for it is too uniform to be accidental.

Thumser in his revision of Hermann's *Staatsaltertümer*,⁸ opposing the view of Hermann himself, observes that Plato's expression *καθαρός ἐν τῷ νόμῳ*⁹ shows that the passages on which Hermann's view rested¹⁰ refer to purity in the eyes of human law, not to purity in its religious significance. Precisely what he means by this I am at a loss to determine, unless it be that *νόμος* is not used of a ritual regulation or practice but only of secular law. But this is clearly not the case. To say nothing of the passage quoted by Thumser himself: *κατὰ τὸν ἐκ Δελφῶν κομισθέντα περὶ τούτων νόμον*,¹¹ we have *νόμος ἐστὶν αὐτοῖς . . . καθαρεύειν τὴν πόλιν*.¹² It is

¹ *Leges*, 865 A; cf. 865 D.

² 869 A.

³ 874 B.

⁴ 874 B.

⁵ 874 C.

⁶ 874 D.

⁷ See p. 103.

⁸ I, 365⁵.

⁹ *Leges*, 874 C.

¹⁰ *E.g.* Dem. xx, 158; Lycurgus, 125.

¹¹ *Leges*, 865 B.

¹² Cf. *Leges*, 831 A, *κατὰ νόμον καθαρθέντα*; Aeschines, I, 188, οὐκ ὦν ἐκ τῶν

at once clear to any reader of Plato's νόμοι that he includes ritual prescriptions under the word.

My conclusions, then, for Athenian ritual are :

1. That among the disabilities entailed by φόνος ἀκούσιος was a ceremonial impurity that required for its removal some rite of purification.¹ The penalty of exile could be cancelled if the culprit secured forgiveness,² but this probably did not obviate the necessity of purification.

2. That justifiable homicide ordinarily required no purification. Under this head were included :

a. the slaying of an enemy in battle ;³

b. homicide in self-defence ;⁴

c. the killing of a public enemy in civil life ; i.e. a tyrant or a traitor to the state.⁵ Such a one was definitely listed as a πολέμιος. It is quite in accord with this that καθαρός is applied to those who are instrumental in bringing about the death of the criminal,⁶ which, in fact, so far from polluting the city or those who have inflicted it, actually purifies the people.⁷

d. the cases where one slays a burglar or a footpad, or inflicts death in defence of near relatives, or to avenge the violation or seduction of his wife.⁸

3. But to say that unintentional homicide required purification and justifiable homicide did not, is to state the principle somewhat too broadly. There were cases of accidental homicide where not even carelessness could be alleged, and where the guilt was so slight that no impurity was held to attach to the slayer. Such, I think, is the case of the accidental killing of a friend in war, of which Demosthenes uses the word καθαρός.⁹ The passage merits a moment's further notice, for on it

νόμων καθαρὸς τὸ σῶμα ; Aeschylus, *Eum.* 171, παρὰ νόμον θεῶν ; see also Plato, *Crat.* 400 E ; *Leges*, 904 A.

¹ Demosthenes, xxxvii, 59 = xxxviii, 22 ; xx, 158 ; cf. Paus. v, 27, 10 ; Plato, *Leges*, 831 A.

² Demosthenes, ib.

³ See pp. 103 f.

⁴ See p. 103 and Sophocles, *O.C.* 548 (cf. 1574 ff.).

⁵ See pp. 104 f.

⁶ Antiphon, ii, 8, 11.

⁷ Antiphon, iv, a, 5 ; γ, 7 ; cp. Demosthenes, xxiii, 43, and Plato, *Leges*, 868 B, *Euthyphro*, 4 C.

⁸ See pp. 101 f. and 110.

⁹ xxiii, 55.

chiefly is based the view that *καθαρός* means 'free from punishment.'¹ The orator has said² that such homicide involves no penalty of exile. In § 55 he says the slayer is *καθαρός*. But Plato³ says he is pure, *after being purified*. So if Plato is in accord with the Attic law of his time, Demosthenes is evidently using *καθαρός* as an equivalent of *ἁθῶς*, or else loosely. The law that he quotes does not itself contain the word *καθαρός*. It occurs in his elucidation of the law and, on the strict reading of his words, applies to accidental homicide, not in the games, but only in war, where it would imply a much smaller degree of criminal negligence than in an athletic contest, or none at all. It may be that to the Athenian the accidental killing of one of his own side in the confusion of battle was so near justifiable homicide that he felt it to require no ritual purification.⁴ The developed form of this idea is seen in a story told by Aelian,⁵—a piece of evidence so late that it can have no direct bearing on our question. Three men on their way to Delphi were attacked by robbers. One man in trying to help his companion, who had grappled with one of the assailants, missed the robber and plunged his sword into his friend. On consulting the Pythia as to his purification he received the following response:

ἐκτευνας τὸν ἐταῖρον ἀμύνων · οὐ σ' ἐμίανεν
αἷμα, πέλας δὲ χέρος καθαρώτερος ἢ πάρος ᾔσθα.

It may be noted that a weakening of the strict ritual requirement relative to purification for accidental homicide in the games also, is perhaps foreshadowed in Antiphon's second tetralogy. The only penalty was impurity;⁶ the defendant admits that he threw the fatal weapon. Yet he pleads against the infliction of the penalty, relying on the transparent quibble that the victim was to blame because he ran in the way of the weapon. Such a plea would very likely be unavailing, but the fact of making it shows that Antiphon

¹ Schoemann, *Gr. Alt.*⁴ II, 365². ² § 53. ³ *Leges*, 865 A f.

⁴ Cf. what I have said concerning physicians, on p. 103.

⁵ *Varia Historia*, III, 44.

⁶ Demosthenes, XXIII, 53 f.; Plato, *Leges*, 865 A f.

thought there was a chance of escaping ritual impurity for even *φόνος ἀκούσιος*.

But if there were accidental homicides involving so little criminal negligence as to approximate *φόνος δίκαιος*, there may have been special cases of what was usually considered justifiable homicide that were felt to involve so much impurity as to render ritual purification indispensable. The purification of Theseus is of course legendary and proves nothing, but it is worth while to note that he had slain his kinsmen, and that it is this fact rather than his other homicides that is emphasized in all the references to his purification.¹ After a particularly atrocious massacre in the course of the civil troubles at Argos, *ἐπηγάγοντο καθάρσια ὡς ἐπὶ αἵματι ἐμφυλῖ.*² Aside from the fact that kindred blood had been shed, this massacre does not seem to have been in warfare, but to have been a more or less cold-blooded act after the victory, *κρατήσαντες δὲ οὐδένα ὑπὸ τοῦ θυμοῦ τῶν ἐναντίων ἔλιπον*. But Plato grants purity even to the brother who has slain his brother in self-defence.³

Purification might of course be undergone when it was not required by law. The unenlightened, or the temperamentally superstitious, are apt to be righteous overmuch, and some would doubtless submit to purification in order to be on the safe side. And there were doubtless periods of reversion when such action could be predicated, not only of individuals, but of whole communities. In either of these ways it is possible to account for the statement of Porphyrius.⁴ Standing alone against contemporary evidence it is unlikely that it has any significance for our subject other than to show a curious reversion to primitive ideas.

¹ He is purified for slaying Pallas and his sons, Pausanias, I, 22, 2; 28, 10. Pallas was uncle of Theseus, Apollodorus, III, 15, 5, 4. In Paus. I, 37, 4 we read, *ληστὰς καὶ ἄλλους ἀποκτείνας καὶ Σίνιν τὰ πρὸς Πιτθέως συγγενῇ*.

² Pausanias, II, 20, 2.

³ *Leges*, 869 C.

⁴ P. 101.

NOTE. R. Dareste, *Le droit criminel dans les lois de Platon (Séances et travaux de l'Académie des Sciences morales et politiques, CXXXVII (1892), 281-303)*, came to my notice too late to insert any mention of it in the body of this article. Dareste seems to have no idea that *καθαρός* means anything else than 'ceremonially pure' (pp. 287, 291, 292, 297). On the relation of Plato's laws to those of Athens, see pp. 286, 292, 293.